HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL Nos.928, 929, 941, 942, 943, 944 and 1161 of 2005

AND

WRIT PETITION Nos.8114, 8134, 8280, 8288, 8371, 9066, 9562, 9974, 9982, 10898 and 12146 of 2005

Writ Appeal No.928 of 2005

Between:

Andhra Kesari College of Education,
Ongole, Prakasham District,
represented by its Correspondent, Sri J.Prasad
and others. ...Appellants

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others.

…Respondents

Counsel for the Appellants : Sri Nuty Rammohan Rao with Sri Ch.Samson Babu

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

Writ Appeal No.929 of 2005

Between:

Indur College of Education,
Bodhan, Nizamabad District,
rep. by its Secretary, D.Thomasaiah

and others. …Appellants.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Appellants : Sri Nuty Rammohan Rao with Sri Ch.Samson Babu

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

Writ Appeal No.941 of 2005

Between:

Malla Reddy College of Education,
rep. by its Secretary & Correspondent,
Ch.Malla Reddy, Secunderabad. …Appellant.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Appellant : Sri B.Adinarayana Rao

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

Writ Appeal No.942 of 2005

Between:

St. Georges College of Education,
rep. by its Correspondent,
M.Niranjan Reddy, Shankarapally
and others. …Appellants.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Appellants : Sri B.Adinarayana Rao

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Appeal No.943 of 2005

Between:

Alimineti Madhava Reddy Memorial College
of Education, rep. by its Correspondent,
R.Petar Spurgeon Jayakar, Hyderabad. …Appellant.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Appellant : Sri B.Adinarayana Rao

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Appeal No.944 of 2005

Between:

Jyothi College of Education,
Sircilla, rep. by its President,
Md.Samuel. …Appellant.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Appellant : Sri Koka Raghava Rao

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

Writ Appeal No.1161 of 2005

Between:

Nova Educational Society,
rep. by its Secretary,
M.Krishna Rao, Hyderabad and another. …Appellants.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
Minority Welfare Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Appellants : Sri S.Niranjan Reddy

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

Writ Petition No.8114 of 2005

Between:

Holy Mary Institute of Technology and Science,
Yenkepally, Ranga Reddy District, rep. by its
Chairman, Y.Thomas Reddy. …Petitioner.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
School Education (Training-A1)
Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioner : Sri S.Sriram

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Petition No.8134 of 2005

Between:

Holy Trinity College of Education,
Bogaram village, Ranga Reddy District, rep. by its
Chairman, Y.Thomas Reddy. …Petitioner.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
School Education (Training-A1)
Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioner : Sri B.Vijaya Bhaskar

Counsel for Respondents : Advocate General
assisted by Government

Pleader for School
Education

Writ Petition No.8280 of 2005

Between:

Miriam College of Education,
Amalapuram, rep. by its
Correspondent, Carl D.Kommanapalli
and others. …Petitioners.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
School Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents
Counsel for the Petitioner : Sri Ch.Samson Babu

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Petition No.8288 of 2005

Between:

Annibesant College of Education,
Karepalli, rep. by its
Chairman, Mary Kutti Cherian
and others. …Petitioners.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
School Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioners : Sri Ch.Samson Babu

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School

Education

Writ Petition No.8371 of 2005

Between:

K.David and aother. …Petitioners.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
School Education (Training A-1) Department,
Secretariat Buildings, Hyderabad. …Respondent

Counsel for the Petitioners : Sri M.Prasad Rao

Counsel for Respondent : Advocate General assisted by Government Pleader for School Education

Writ Petition No.9066 of 2005

Between:

AES College of Education,
Moinabad, rep. by its
Correspondent, Mohd.Ghouse
Moinuddin. …Petitioner.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
School Education (Training-A1) Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioner : Sri S.Sriram

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

Writ Petition No.9562 of 2005

Between:

Dr.K.S.P.R.College of Education,
Narsaraopet, rep. by its
Correspondent, P.Rayanna
and others. …Petitioners.

AND

State of Andhra Pradesh,
rep. by its Secretary,
School Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioners : Sri T.Rajendra Prasad

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Petition No.9974 of 2005

Between:

Thoma Educational Society,
Amalapuram, rep. by its
Correspondent, Carl D.Kommanapalli
and others. …Petitioners.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
School Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioner : Sri Ch.Samson Babu

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Petition No.9982 of 2005

Between:
Allen Alfred Educational Society,
Hyderabad, rep. by its
Secretary, M.Praveen Kumar
and another. …Petitioners.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
Minority Welfare Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioners : Sri V.Ramakrishna Reddy

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Petition No.10898 of 2005

Between:

Ameeruddin Academy of General, Technical,
Professional Educational Society,
Giddalur, rep. by its
Correspondent & Secretary,
Smt.S.Mehatab. …Petitioner.

AND

State of Andhra Pradesh,
rep. by its Principal Secretary,
Education Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioner : Sri V.Mallik

Counsel for Respondents : Advocate General
assisted by Government
Pleader for School
Education

Writ Petition No.12146 of 2005

Between:

Nova Educational Society,
rep. by its Secretary,
M.Krishna Rao, Hyderabad and others. …Appellants.

AND

Government of Andhra Pradesh,
rep. by its Principal Secretary,
Minority Welfare Department,
Secretariat Buildings, Hyderabad and others. …Respondents

Counsel for the Petitioners : Sri S.Niranjan Reddy

Counsel for Respondents : Advocate General assisted by Government Pleader for School Education

: **J U D G M E N T** :

AUGUST, 2006.

PER G.V.SEETHAPATHY, J

By this order, we are disposing of a batch of writ appeals filed against order dated 19.04.2005 passed by the learned Single Judge whereby he dismissed Writ Petition Nos.5750, 6162 and 8348 of 2005 filed for quashing G.O.Ms.No.57, School Education (Training-A1) Department, dated 21.03.2005 (for brevity the 'G.O.'). We are also disposing Writ Petition Nos.8114, 8134, 8280, 8288, 8371, 9066, 9562, 9974, 9982, 10898 and 12146 of 2005 in which legality of the G.O. has been questioned.

For admission of the students into B.Ed. courses in aided and

unaided minority colleges of Education, the State Government prescribed the procedure vide Rules circulated through G.O.Rt.No.169, Education (SE.TRG.I) Department, dated 05.02.2004. As per Rule 4(ii), the managements of unaided minority colleges were required to admit the candidates to the extent of 85% of intake belonging to concerned minority community, who were eligible and qualified in Ed-CET-2003 or common entrance Test conducted by Association of Managements of Colleges of Education (Ed.CET-AC). The said G.O further stipulates that while filling 85% seats under management quota, if seats were vacant in any methodology due to non-availability of minority candidates in that methodology, such seats could be filled with the minority candidates belonging to other methodology as per merit, with the prior permission of the Commissioner & Director of School Education and still if the management could not get sufficient number of concerned minority candidates such seats could be filled with non-minority candidates who qualified in the Ed-CET 2003, duly following the merit and rule of reservation. The said G.O further contemplated that the remaining 15% of seats shall be filled with eligible and qualified candidates of Ed-CET-2003, methodology wise, either minority or non-minority. Sub-rule (x) of Rule 10 of the G.O prescribed that the minority status of the candidates should be determined as per the provisions of the orders issued in G.O.Ms.No.1, Minorities Welfare (M&R) Dept., dated 16-01-2004. Rule II(2) of G.O.Ms.No.1 laid down that Secondary School Certificate or any other equivalent record/Transfer Certificates from the schools in which they have studied shall be the basis for determining the religious status for admission in Minority institutions. G.O.Rt.No.169 was applicable for B.Ed admissions for 2003-2004 only.

In supercession of all earlier G.Os. including G.O.Rt.No.169, dated 05.02.2004, the State Government issued G.O.Ms.No.26, School Education (Trg.A1) Department, dated 03.02.2005 and laid down the

procedure for allotment of the students into B.Ed. courses in aided and unaided minority colleges in the State. The relevant extract of Rule 6 of G.O.Ms.No.26, dated 03.02.2005 reads as under:

"6. Un-aided Minority Colleges of Education

(i) 55% Manaagement Seats – to be filled with Minority candidates only

The management of private un-aided Minority colleges of Education shall admit the candidates to the extent of 55% of intake belonging to **concerned minority community** who are eligible and qualified in Common Entrance Test conducted by Government (Ed.CET) or Common Entrance Test conducted by Association of Managements of Colleges of Education (Ed.CET-AC) as per the option already exercised by them with the Permanent Committee.

(a) The admissions to the **"55% Management Seats"** shall be methodology wise as per merit ranking among the minority candidates applied to the college duly following the transparent method prescribed in the rules.

(b) The existing rules of reservation for special categories i.e. NCC/Sports/CAP/PHC and Women are to be followed as prescribed in the rules.

(c) If seats are vacant in any methodology due to non-availability of minority candidates in that methodology, such vacant seats shall be filled with the minority candidates belonging to other methodology as per merit with prior permission of Regional Joint Director of School Education concerned duly producing all relevant records.

(d) Still, if the management is unable to get sufficient number of concerned minority candidates, such seats can be filled with non-minority candidates who are qualified in the Ed.CET/Ed.CET-AC (as per the option exercised already) duly following the merit and rules of reservation with prior approval of the Regional Joint Director of School Education concerned. However, the provisions of G.O.Ms.No.1, Minorities Welfare (M&R) Department, dated 16.01.2004 have to be fulfilled if the minority status of the college is to be retained.

(e) 85% of the seats covered under **"55% Managaement seats"** in each methodology shall be allocated to the local candidates and remaining 15% of the seats shall be unreserved for which Andhra University, Osmania

University, Sri Venkateswara University local candidates and non-local candidates of Andhra Pradesh can compete in combined merit order of concerned minority.

(ii) 15% - Management Seats – to be filled with Minority or Non-Minority candidates

The management shall fill 15% of seats with eligible and qualified candidates as per merit in Ed.CET/Ed.CET-AC (as per the option exercised already)

(ii) 30% - Convener Seats – to be filled by the Convener

The remaining 30% of seats shall be filled by the Convener, Ed.CET from the common merit list of Ed.CET as per Rules."

The aforementioned G.O. was modified by G.O.Ms.No.55, School Education (Trg.A1) Department, dated 20.03.2005, the relevant portion of which is reproduced below:

"2. In the reference 2nd read above, the Treasurer of Minority B.Ed Colleges Association has submitted representation to the Government for consideration on the following:-

(i) to delete the provisions in Rules 6(iii) and 7 in G.O.Ms.26, Education Department dated:3.2.2005 and allow them to follow the rules issued in G.O.Ms.No.405 Education Department dated:6.11.1995 and G.O.Ms.No.570 Education Department dated:16.6.2004 for academic year 2004-05; and

(ii) to delegate the powers for approving the list of candidates admitted in minority colleges to Regional Director concerned instead of State Council for Higher Education as ordered in G.O.Ms.No.26 Education Department dated:3.2.2005.

3. Government examined the matter in detail, and hereby accept the demand No.(i) above duly exempting the provisions in Rules 6(iii) and 7 of G.O.1st read above for the academic year 2004-05 and reverting the quota to the extent of 85% and 15% of management quota with the concerned minority candidates and management quota respectively. Regarding determining the minority status of the candidate, SSC records may be taken into consideration while admitting the students in minority quota. In regard to demand No.(ii) above, Government after due consideration rejected the same."

G.O.Ms.No.57 dated 21.03.2005 was issued in continuation of G.O.Ms.No.55 dated 20.03.2005 and in supercession of the orders issued in G.O.Ms.No.405 dated 6.11.1995, G.O.Rt.No.570 dated 16.06.2004 and G.O.Rt.No.478 MW Dept., dated 27.12.2004.

The criteria prescribed in the G.O. for determining minority status of the candidates reads as under:

> **"(i) Criteria for determining minority status of the candidates:-**
>
> As there were reports of students/candidates obtaining religious conversion certificates overnight by exploiting the provisions contained in G.O. 5th above, the following condition is prescribed. For the purpose of determining the minority status of candidates seeking admission into 85% management quota in the B.Ed., minority colleges, the Secondary School Certificates or Transfer Certificates (T.C.) from the school from which they have studied shall be the basis. In the absence of a T.C., the candidate should obtain a certificate from the Head of the Institution in which he/she studied in proforma prescribed (Annexure-I) to this order. Further, the students submitting bogus minority community certificates shall be dealt with under the relevant sections of the I.P.C. apart from losing their seats following the due procedure.
>
> **(ii) Criteria for admission into minority Colleges of Education:-**
>
> It is clarified that only such of those candidates who have qualified at Ed.CET-2004 or Ed.CET-AC are eligible for admission into minority Colleges of Education, and those candidates who have not qualified at Ed.CET-2004 or Ed.CET-AC shall not be admitted into the minority Colleges of Education and no deviation is permitted in this regard. This condition is stipulated herein in order to implement the orders issued by Supreme Court of India and at the same time to ensure quality education to the students.
>
> **(iii) Procedure for filling of unfilled seats in 85% management seats in minority colleges:-**
>
> As the number of Ed.CET or Ed.CET-AC qualified minority candidates are lesser than the number of seats made available under 85% management seats in minority Colleges

of Education, there is a distinct possibility of such seats remaining unfilled and to fill up such seats in the interest of students and managements, the following procedure is prescribed i.e., after admitting minority students duly following the procedure laid down in provisions (i) and (ii) of this order, if there are any unfilled seats, the same shall be notified and the Convener, Ed.CET-2004 shall allot candidates following the due procedure. Under no circumstance, the minority colleges shall admit students into 85% management quota, who do not satisfy the criteria laid down in the provisions (i) and (ii) of this G.O. If any violation is noticed, suitable action shall be taken to cancel the minority status of concerned College of Education apart from withdrawing No Objection Certificate issued by this Govt., and take action for de-recognition of the said college by National Council of Teacher Education, besides disallowing the irregularly admitted candidates from appearing at examinations by following the established procedure."

The thrust of the attack against the said G.O by the appellants and other writ petitioners, who are Minority Unaided Colleges of Education, is two fold. The first ground of attack is that by prescribing in clause 3(i) of the G.O that for the purpose of determining the minority status of candidates seeking admission into 85% management quota in the B.Ed., minority colleges, the Secondary School Certificate (SSC) or Transfer certificate (TC) from the school shall be the basis and in the absence of the said certificates, a certificate from the head of the institution in the prescribed proforma shall be produced, the fundamental right guaranteed under Article 25 of the Constitution to freely profess, practise and propagate religion is sought to be taken away. The second ground of challenge against the impugned G.O is that by prescribing in sub-clause(iii) of Clause 3 of the G.O that the unfilled seats shall be notified to the Convenor, Ed.CET-2004, who shall allot candidates to fill those seats forming part of 85% of management seats, the right to administer the minority institutions conferred on them under Article 30(1) of the Constitution is sought to be infringed.

Learned counsel for the appellants and writ petitioners argued that taking the Secondary School Certificate/Transfer Certificate or in their absence, a certificate from the Head of the Institution as the basis for determining the religion of the candidates seeking admission tantamounts to violating the fundamental right guaranteed under Article 25 of the Constitution of India regarding freedom to profess, propagate and practise religion, inasmuch as such of those candidates who changed their religion subsequent to passing SSC or other qualifying examination and seeking admission into B.Ed will be deprived of admission into B.Ed. In other words, the contention of the learned counsel is to the effect that the impugned G.O prohibits voluntary change of religion.

The learned Advocate General, on the other hand, argued that the impugned G.O neither prohibits voluntary conversion nor does it impose any fetters on the freedom of individuals to profess, propagate and practise a religion of his choice. He further contended that the circumstances under which and the reasons for which the said criteria for determining the minority status was prescribed, are set out in the G.O itself. According to him, it was brought to the notice of the Government about large number of instances of misuse of the provision of allowing Baptism Certificate as a basis and in order to prevent such misuse resorted to by the management as well as students and in order to protect the interests of genuine minority candidates and the managements and to uphold criterion of merit, it was stipulated that SSC/TC, and in their absence a certificate from the Head of the Institution be taken as the basis for determining the minority status. It is to be noted that the criteria are prescribed only for the purpose of determining the minority status of the candidates for their admission to B.Ed course and it has nothing to do with the freedom of religion enshrined in Article 25 of the Constitution. Article 25(1) lays down that subject to public order, morality and health and to

the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. The act of practice is concerned primarily with religious worship, rituals and observations`. Propagation is concerned with right to communicate beliefs to another person or to expound the tenets of one's religion, but does not include a right to forcible conversions.

We have considered the respective submissions.

In **Ratilal v. State of Bombay** [1], the Supreme Court held that:

> "Religion is not necessarily theistic; there are well known religions in India like the Buddhism and Jainism which do not believe in the existence of God or of any intelligent First Cause. A religion has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it is not correct t say that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts well.
>
> The article protects acts done in pursuance of religious belief as part of religion. For, religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines.

Following the above decision, it was held by the Supreme Court in **Rev. Stainislaus v. State of M.P** [2] as follows:

> "What Article 25 (1) grants is not the right to convert another person to one's own religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees `freedom of conscience' to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike."

In **Digyadarsan R.R varu v. State of A.P**[3], it was held that when mathadhipathi was placed under suspension and the Asst. Commissioner was appointed as day-to-day administrator because of the enquiry which was pending against the former, there was no violation of Article 25 of the Constitution as Mathadhipathi was not prohibited or debarred from professing, practicing and propagating his religion. In **Lily Thomas v. Union of India** [4], the Apex Court held that:

> "Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a supernatural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just fro some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited."

The ratio of the aforementioned decision is that the question of infringement of the freedom enshrined in Article 25 of the Constitution arises only when there is an obstruction to profess, practise and propagate any religion. So long as no such fetters are imposed on one's right to freely profess, practise and propagate religion of his choice, the challenge under Article 25 does not simply exist. In our opinion, the impugned G.O. in no way imposes any restriction or creates any fetters in the matter of choice of a religion or in free professing, practising or propagating the same. The impugned G.O. only seeks to lay down criteria for determining the minority status of the candidates seeking admission into B.Ed based on SSC/TC that makes a mention of the religion of the candidate and the said G.O was issued

in concurrence with the Minority Welfare Department as can be seen from clause 6 thereof and therefore, it complies with the requirement of sub-rule (vii) of Rule 4 of G.O.Ms.No.26, dated 03.02.2005. The challenge to the impugned G.O.Ms.No.57 under Article 25 is therefore without any substance.

Learned counsel for the appellants and writ petitioners then argued that the impugned G.O. is arbitrary and discriminatory inasmuch as the said stipulation of taking the SSC/TC as the basis is made only in respect of admission to B.Ed course, whereas no such stipulation is existing in the matter of admission to other professional courses like Medicine, Engineering etc and is therefore violative of Article 14. It is to be seen that G.O.Ms.No.26 modifying which G.O.Ms.Nos.55 and 57 are issued contains a set of rules pertaining to admission of students into B.Ed course only. The other professional courses are not covered by the said rules and admission to each of the professional courses is governed by different sets of rules. The nature, complexion, duration, content and admission procedures of various professional courses being different, they cannot be expected to be governed by a common set of rules. The eligibility criteria prescribed for admission to each of these courses is also different from one another. For admission into B.Ed course, minimum educational qualification is graduation, whereas for professional courses like Medicine and Engineering, the minimum educational qualification is only intermediate. Same set of norms or guidelines cannot therefore be prescribed for all the professional courses. When admission is sought into a specific course, which is different in all material aspects from other courses, the candidates seeking admission into that particular course do not stand on par with the candidates seeking admission to other courses. There is absolutely no basis to compare the criteria for admission to a particular professional course with those of other courses.

The learned Advocate General countered the aforesaid argument and submitted that the number of un-aided minority colleges offering B.Ed course far exceeds the number of such colleges offering other professional courses and the intake into the former is also enormous when compared to the latter because of the huge potentiality of job opportunities. He therefore, contended that the possibility of misuse of allowing Baptism Certificate as the basis for determination of the religion is too high in case of admission to B.Ed colleges when compared to other professional colleges and in fact, it was found to have been extensively misused and therefore, the Government had to stipulate in G.O.Ms.Nos.55 and 57 that SSC/TC shall be the basis for determination of the minority status of the candidate.

We have considered the respective submissions on this aspect.

In the counter affidavit filed by the first respondent, Principal Secretary, School Education Department, it is averred that in the year 2002-2003 there were (38) minority B.Ed Colleges, i.e., (26) Christian Minority and (12) Muslim Minority Colleges and in 2003-2004, the number of minority colleges has increased to 77, i.e., (44) Christian Minority Colleges and (33) Muslim minority colleges and during 2004-2005, the number increased further to 109, i.e., (71) Christian minority colleges and (38) Muslim minority colleges, with a total intake of 12,319 (8054 Christian and 4265 Muslim minority colleges). As against this, there were only 195 non-minority colleges with intake of 22007. When the above figures are compared to the population of the State as per 2001 census, the spurt in the establishment of minority B.Ed colleges and the craving for admission into those colleges becomes too obvious. In the same counter affidavit of the first respondent, it is stated that as per 2001 census, the population of the State is 7,62,10,007 out of which Muslim minorities constituted 69,86,856 (9.17%) and Christian minority population was 11,81,917

(1.55%). Thus, 19.94% of the seats were available for Christian minorities, whose population is only 1.55% and 10.56% of the seats were available for Muslim minorities, whose population was 9.17% to the extent of 85% management quota. The establishment of such disproportionately huge number of minority B.Ed colleges, vis-à-vis, the population of the respective minorities is indicative of the fact that all the seats are not meant for minority students alone and the gates are open for students of non-minority communities also, in view of the huge demand for the course. If the seats to the extent of 85% are not to be filled with genuine minority students, the unfilled seats get filled by the Convener from out of the common merit list of Ed.CET. The complaint of the respondent has been that in order to secure a seat in the minority college, less meritorious students have resorted to overnight conversions and sought admission on the basis of falsely procured Baptism Certificates and thereby frustrating the genuine claims of more meritorious students of common merit list of the Convener. The respondents contend that with a view to put an end to such obnoxious malpractice of pretended conversions for the purpose of material gain of securing admission to B.Ed course, the stipulation of production of SSC/TC is made in G.O.Ms.Nos.55 and 57. It is also to be noted that, as averred by the first respondent in his counter affidavit, the earlier criterion of Baptism Certificate was prescribed only in the matter of admission into Christian minority educational institutions, and admission of Muslim minority candidates was made on the basis of SSC/TC and no muslim minority college or candidate challenged the said condition. It is also to be seen that apart from the fact that G.O.Ms.No.57 prescribes a common criteria for determination of minority status to all the minorities equally, it also safeguards the interests of genuine minority students so that their seats are not taken away by those, who resorted to false conversions overnight for the purpose of securing admission. It also helps in retaining the truly minority status of the institution. When a measure is intended to

safeguard the interests of the genuine minority students as well as to preserve the minority status of the institution as well, it cannot be dubbed as causing inroads into the freedom guaranteed under Article 25 of the Constitution nor can it be said to be discriminatory or arbitrary or offending the equality doctrine under Article 14 inasmuch as the candidates seeking admission to B.Ed course cannot be equated with those seeking admission to other professional courses, each course being separate and governed by different set of rules.

In the additional counter affidavit filed on behalf of first respondent, the details of the total intake of seats and the number of candidates admitted to 85% quota out of whom number of candidates who had originally declared themselves as Christians at the time of filing the application form and the number of candidates, who subsequently declared themselves as Christians by obtaining Baptism certificate in six of the colleges whose managements are among the petitioners. Even in the original counter affidavit also, the first respondent has mentioned two instances of Hannamma College of Education, Kadapa, and Bhongir College of Education, Nalgonda, where large number of admissions were made based on conversion certificates. As per the details furnished in the counter affidavit, 67 out of 102 students were admitted based on Baptism Certificate in New College of Education, Nizamabad, 90 out of 136 in Sri Rayalaseema College of Education, Kurnool, 82 out of 102 in Bhongir College of Education, Bhongir, 60 out of 85, in Jyothi College of Education, Siricilla, 91 out of 102 in Anebesent College of Education, Khammam, 85 out of 102, in Trinity College of Education, Karimnagar were all admitted on the basis of Baptism Certificates and those candidates declared themselves as Christians subsequent to the date of their application for entrance Test. The material papers annexed to the said counter affidavit disclose the details of the candidates who had mentioned their religion as Christianity in their applications for entrance Test and they are clearly outnumbered by those candidates,

who do not figure in the Christian minority list prepared by Convenor, Ed.CET, but,however, were admitted based on Baptism Certificates obtained subsequently. The statistical data furnished by the first respondent in their counter affidavits strengthens their contention that the provision made by the Government for taking the Baptism Certificates into consideration has been put to extensive abuse, which necessitated dispensing with the same and stipulating SSC/TC to be taken as the basis for determining the minority status. It can reasonably be presumed that at the time of admission to SSC, the entries made regarding the religion of the candidates in the concerned registers would have been bona fide and free from any pretension.

Coming to the other challenge of the appellants/writ petitioners to the G.O. as being violative of Article 30(1), the learned Advocate General contended that the question of Convener allotting students arises only in the event of any seats remaining unfilled against the 85% management seats and not otherwise and therefore, the G.O. does not per se impose any restriction on the right of the managements to administer their minority institutions. Article 30(1) declares that all the minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The learned counsel for the appellants and writ petitioners contended that Rule 3(iii) of the G.O, while laying down procedure for filling up unfilled seats in 85% management seats, stipulates that the unfilled seats shall be notified and the Convener, Ed.CET-2004 shall allot candidates following due procedure and such a stipulation amounts to depriving the right of the managements to fill the seats as per their choice. They further contend that the further stipulation that under no circumstances, the minority colleges shall admit students into 85% management quota, who do not satisfy the criteria laid down in the provisions 1 and 2 of the G.O coupled with threat of suitable action in the event of violation, clearly amounts to interfering with their right to

administer the institutions, which right includes the right to admit the students. In support of their contention, they relied upon a decision of the Supreme Court in **T.M.A.Pai Foundation v. State of Karnataka**[5], wherein it was held that:

> "The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions".

In the above decision, it was also held while answering question No. 5(a) that:

> " a minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence".

While holding that the right to administer includes the right to admit students of their choice, the Supreme Court, however, held that the said right is amenable to regulation to safeguard merit and achieve excellence. It was held as follows:

> "It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of

> granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post-graduation non-professional colleges or institutes".

In the above decisions, it was held that a certain percentage of seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or the State and the rest of the seats may be filled up on the basis of counseling by the State agency and the prescription of the percentage has to be done by the Government according to the local needs and different percentages can be fixed for minority Un-aided and non-minority Un-aided and professional colleges.

In the subsequent decision in **P.A.Inamdar v. State of Maharashtra** [6], the Supreme Court held that the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration…….. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated (Para 55, *Pai Foundation*).

It was further held that:

" Apart from the generalized position of law that the right to administer does not include the right to maladminister, an additional source of power to regulate by enacting conditions accompanying affiliationor recognition exists. Balance has to be struck between the two objectives: (i) that of ensuring the standard of excellence of the institution, and (ii) that of preserving the right of the minority to establish and administer its educational institution. Subject to a reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no inroad into the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away".

In **P.A.Inamdar** (6 supra), the Supreme Court further held that:

" As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill which was approved by Pai Foundation is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats, which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own

admissions if fair, transparent, non-exploitative and based on merit.

In para 129 in **P.A.Inamdar v. State of Maharashtra** (6 supra), the Supreme Court held that in Pai Foundation, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

On the question of admission procedure of unaided educational institutions, on the first question of enforcement of reservation policy, the Supreme Court held in P.A.Inamdar (5 supra) in para 132 that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost.

In Paras 133, 134 and 138, it was held that:

> So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.
>
> However, different considerations would apply for graduate and post graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a university, Board, Central or State

> Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.
>
> It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralized and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.

In para 91, it was held that, however, merely because Article 30(1) has been enacted, minority educational institutions do not become immune from the operation of regulatory measures because the right to administer does not include the right to maladminister. To what extent the State regulation can go, is the issue. The real purpose sought to be achieved is to give minorities some additional protection.

From the above, it is clear that the right of minority institutions to establish and administer their institutions is not absolute and is amenable to regulation. In fact, in the impugned G.O., the said right is in no way sought to be regulated. What all the G.O. stipulates is that in the event of the minority unaided professional institutions fail to fill the entire quota of 85% and if any seats remain unfilled, such of those seats alone will be allotted by the Convener from out of the common merit list. Such a provision as observed supra would only be in the interest of both meritorious students and also the managements. Instead of keeping the seats unfilled, it is only just and proper that the meritorious students from the common merit list prepared by the Convener are allotted to such unfilled vacancies, which also ensures the complete intake of 85% of the management seats. As otherwise,

the managements also stand to lose when a number of seats remain unfilled.

What is prohibited in the light of the decisions of the Apex Court in T.M.A Pai Foundation (5 supra) and P.A.Inamdar (6 supra) is sharing of seats by the State in the sanctioned intake of admissions to unaided private professional institutions. The impugned G.O. does not contemplate seat sharing at all. In fact, G.O.Ms.No.55, dated 20.03.2005 restored the quota of 85% management seats to be filled with minority candidates by modifying G.O.Ms.No.26 where the said quota was reduced to 55% while providing for filling of remaining 30% seats by Convener. By deleting sub-rule (iii) of Rule 6 of G.O.Ms.No.26, the full quota of 85% tobe filled with minority students and remaining 15% to be filled with minority and non-minority students, all by the managements is revived in G.O.Ms.No.55. What all the G.O. contemplates is that only in the event of any seats out of the 85% remaining unfilled, the same shall be notified and the Convener shall allot candidates to fill those unfilled seats. In sub-rule (iii) of Rule 3 of the G.O., the purpose for making the said provision is stated thus:

> "As the number of Ed.CET or Ed.CET-AC qualified minority candidates are lesser than the number of seats made available under 85% management seats in minority Colleges of Education, there is a distinct possibility of such seats remaining unfilled and to fill up such seats in the interest of students and managements, the following procedure is prescribed, i.e., after admitting minority students duly following the procedure laid down in provisions (i) and (ii) of this order, if there are any unfilled seats, the same shall be notified and the Convenor, Ed.CET-2004 shall allot candidates following the due procedure.
>
> Thus, the right of the managements to fill up the entire quota of 85% with minority students and the remaining 15% with minority and nonminority students is in no way affected by the impugned G.O. because they are given the priority to fill up 85% seats at the first instance and only in the event of any seats remaining unfilled the question of Convenor allotting

candidates to fill those seats arises. It is not the case of the appellants/petitioners that the qualified minority candidates are available to fill the entire 85% quota of the management.

The statistical data furnished by the first respondent enclosed as Annexure No.13 to the counter affidavit at Page 155 of material papers shows that number of colleges and the seats available for the minorities therein are highly disproportionate and far in excess, vis-à-vis, the respective population of the Christian and Muslim minorities in the State as per 2001 census. G.O.Ms.No.26, dated 03.02.2005, Rule 6(i) contemplates that admissions to 55% management seats should be methodology-wise and if seats are vacant in any methodology due to non-availability of minority candidates in that methodology, such vacancies shall be filled with minority candidates of other methodology as per merit and still if the management is unable to get sufficient number of concerned minority candidates such seats can be filled with non-minority candidates who are qualified in the Ed.CET/Ed.CET-AC. The possibility of certain seats remaining unfilled even out of 55% quota is visualized in G.O.Ms.No.26 and the said possibility looms large with the restoration of the full quota of 85% in G.O.Ms.Nos.55 and 57. That in fact, some seats were remaining unfilled is borne out by the representations of the individual colleges and the A.P. Minority B.Ed Colleges Association as reflected in the G.Os, for instance, G.O.Rt.No.570, dated 16.6.2004, where non-availability of minority candidates is referred to. The distinct possibility of some seats remaining unfilled as referred to in Rule 3(iii) of the G.O. is not imaginary, but is based on experience and the said possibility increases with the increase in the number of colleges and seats every year. When certain number of seats were unfilled, it does not auger well even for the managements to keep them vacant and on the other hand, filling of those seats with meritorious candidates allotted by the Convener from out of the common merit list promotes excellence in education, which the institutions are required to strive for,

without, at the same time, making any inroads into the right of the minority institutions to make admissions, which, in fact, is more in the nature of protection under Article 30(1).

In Pai Foundation (5 supra), it was held that State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees. The provision made in Rule 3(iii) of the G.O. enabling the Convener to fill such of those seats remaining unfilled by the management is intended to subserve the cause of fairness, transparency and non-exploitation without in anyway interfering with the right of minority unaided professional institutions to admit students. It cannot, therefore, be said that Rule 3(iii) of the G.O. is violative of Article 30 or any other constitutional or statutory provisions.

In the circumstances and for the above reasons, it is held that there are no valid grounds to interfere with the judgment of the learned single Judge.

In view of the above discussion, we hold that the appeals and writ petitions are meritless and are liable to be dismissed. Ordered accordingly.

G.V.SEETHAPATHY, J

23rd August, 2006.

G.S.SINGHVI, CJ

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[1] AIR 1954 S.C.388

[2] AIR 1977 SUPREME COURT 908

[3] AIR 1970 SUPREME COURT 181

[4] (2000) 6 Supreme Court Cases 224

[5] (2002) 8 Supreme Court Cases 481

[6] (2005) 6 Supreme Court Cases 537